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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 GERALD J. PAYNE,

12 Plaintiff,

13 v.

14 JARED D. LOZANO, et al.,

15 Defendants.
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No. 19-cv-2595 KJN P

ORDER

17 Plaintiff is a state prisoner, proceeding without counsel, with a civil rights complaint
18 under 42 U.S.C. § 1983. This action proceeds on plaintiff's claims that defendant Dr. Tucci
19 violated plaintiff's due process rights in February of 2019 at the California Medical Facility.
20 (ECF No. 13 at 3.) On January 28, 2021, plaintiff filed a notice suggesting he wishes to
21 voluntarily dismiss this action. Plaintiff states he was tested for COVID-19 three times in three
22 weeks. Normally, after 14 days an inmate is released back to normal program, but this time
23 plaintiff was tested again, and for the first time tested positive, and was told he would be housed
24 with everyone who has tested positive. From the onset of his new positive, they began a new
25 battery of tests indicating plaintiff's case was severe, and put him on oxygen along with other
26 measures. Plaintiff appears to believe that all of this was done to legitimize the "positive" test,
27 and claims they can say what they want and place plaintiff on oxygen, whether he needs it or not,

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1 and then “feed [him] the virus.” (ECF No. 30 at 2.) Thus, plaintiff wants to withdraw “this
2 appeal” in hopes of “living through their efforts to make me appear sick.” (Id.)

3 Given the nature of the COVID-19 virus, it is not implausible that plaintiff could test
4 negative on three occasions and then test positive on the next occasion. It is unclear why plaintiff
5 believes he is not COVID-19 positive, or why prison staff would want to make him appear
6 positive if he were not. Given the demands COVID-19 is placing on prison and prison medical
7 staff, as well as the outside world, it does not seem very plausible. However, in an abundance of
8 caution, the court will grant plaintiff an additional thirty days to confirm that he wishes to
9 voluntarily dismiss this action. In the meantime, defendants should file a notice as to whether or
10 not they would object to such dismissal. Plaintiff is cautioned that if he fails to respond to this
11 order, barring objection by defendant, this case will be dismissed per his January 28, 2021
12 request.

13 Accordingly, IT IS HEREBY ORDERED that, within thirty days from the date of this
14 order:

- 15 1. Plaintiff shall confirm his request to voluntarily dismiss this action; and
- 16 2. Defendant shall inform the court whether he objects to such dismissal.

17 Dated: February 3, 2021

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19 KENDALL J. NEWMAN
20 UNITED STATES MAGISTRATE JUDGE

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